

CRIMINAL PROPERTY CONFISCATION ACT 2000 (WA)

Unexplained Wealth Provisions

GENERAL

4. Confiscable property — synopsis

Property of the following kinds is confiscable to the extent provided by this Act —

- (a) property equal in value to any amount by which the total value of a person's wealth exceeds the value of the person's lawfully acquired wealth (*unexplained wealth* — see section 144);

...

5. Application of Act to confiscable property

- (1) This Act applies to a person's unexplained wealth whether any property, service, advantage or benefit that is a constituent of the person's wealth was acquired before or after the commencement of this Act.

...

6. When property is confiscated

Property is confiscated when it is given or taken in satisfaction of a person's liability under section 14, 20 or 24 to pay the amount specified in an unexplained wealth declaration, a criminal benefits declaration or a crime-used property substitution declaration.

UNEXPLAINED WEALTH

11. Applying for unexplained wealth declarations

- (1) The DPP may apply to the court for an unexplained wealth declaration against a person.
- (2) An application may be made in conjunction with an application for a freezing order, in proceedings for the hearing of an objection to confiscation, or at any other time.

12. Making unexplained wealth declarations

- (1) On hearing an application under section 11(1), the court must declare that the respondent has unexplained wealth if it is more likely than not that the total value of the person's wealth is greater than the value of the person's lawfully acquired wealth.
- (2) Any property, service, advantage or benefit that is a constituent of the respondent's wealth is presumed not to have been lawfully acquired unless the respondent establishes the contrary.

- (3) Without limiting the matters to which the court may have regard, for the purpose of deciding whether the respondent has unexplained wealth, the court may have regard to the amount of the respondent's income and expenditure at any time or at all times.
- (4) When making a declaration, the court is to —
 - (a) assess the value of the respondent's unexplained wealth in accordance with section 13; and
 - (b) specify the assessed value of the unexplained wealth in the declaration.
- (5) The court may make any necessary or convenient ancillary orders.

13. Assessing the value of unexplained wealth

- (1) The value of the respondent's unexplained wealth is the amount equal to the difference between —
 - (a) the total value of the respondent's wealth; and
 - (b) the value of the respondent's lawfully acquired wealth.
- (2) For the purposes of subsection (1), the value of any property, service, advantage or benefit that has been given away, used, consumed or discarded, or that is for any other reason no longer available, is the greater of —
 - (a) its value at the time that it was acquired; and
 - (b) its value immediately before it was given away, or was used, consumed or discarded, or stopped being available.
- (3) The value of any other property, service, advantage or benefit is the greater of —
 - (a) its value at the time that it was acquired; and
 - (b) its value on the day that the application for the unexplained wealth declaration was made.
- (4) However, when assessing the value of the respondent's unexplained wealth, the court is not to take account of —
 - (a) any property that has been confiscated under this Act or any other enactment;
 - (b) any property, service, advantage or benefit that was taken into account for the purpose of making an earlier unexplained wealth declaration against the respondent; or
 - (c) any property, service, advantage or benefit in relation to which a criminal benefits declaration has been made.

14. Unexplained wealth payable to State

When the court makes an unexplained wealth declaration, the respondent is liable to pay to the State an amount equal to the amount specified in the declaration as the assessed value of the respondent's unexplained wealth.

RECOVERY OF CONFISCABLE PROPERTY

25. Recovery of unexplained wealth, criminal benefits or substituted property

- (1) The amount payable by a respondent under section 14, 20 or 24 is payable —
 - (a) within one month after the date on which the respective unexplained wealth declaration, criminal benefits declaration or crime-used property substitution declaration was made; or
 - (b) within any further time allowed by the court.
- (2) The court may allow further time even if the due date has passed.
- (3) If part or all of the amount is not paid within the time allowed, the unpaid amount is recoverable from the respondent by the State in a court of competent jurisdiction as a debt due to the State.

26. Use of frozen property to meet liability

- (1) Frozen property owned by a respondent may be taken, with the respondent's consent, in payment or part-payment of an amount payable by the respondent under section 14, 20 or 24.
- (2) However, if part or all of the amount payable by the respondent is not paid within the time allowed under section 25(1), then despite any other provision of this Act, any frozen property that is owned by the respondent is available for the purpose of satisfying the respondent's liability as if the property had been taken from the respondent's possession under a writ, warrant or other process of execution.
- (3) Nothing in subsection (1) or (2) limits any other means of satisfying a debt due to the State under section 25(3).

FREEZING PROPERTY

41. Applying for freezing orders

- (1) The DPP may apply to the court for a freezing order for property.
- (2) An application may be made ex parte.

43. Making freezing orders

- ...
- (3) The court may make a freezing order for all or any property that is owned or effectively controlled by the person or that the person has at any time given away if —
 - (a) a production order has been made against the person;
 - (b) an application has been made against the person for an unexplained wealth declaration, criminal benefits declaration, crime-used property substitution declaration or production order; or
 - (c) the DPP advises the court that such an application is likely to be made within 21 days after the freezing order is made.
 - (4) The court is not to refuse to make a freezing order for property under subsection (3) only because the value of the property exceeds, or could

exceed, the amount that a person could be liable to pay under section 14, 20 or 24 if the declaration is made.

...

- (6) A freezing order may be made under subsection (3) or (5) for all property owned or effectively controlled by the person, whether or not any of the property is described or identified in the application.
- (7) A freezing order may be made under subsection (3) or (5) for all property acquired after the order is made —
 - (a) by the person; or
 - (b) by another person at the request or direction of the first-mentioned person.

INVESTIGATION POWERS

53. Financial institutions may volunteer information

A financial institution that has information about a transaction with the institution may give the information to the DPP or a police officer if there are reasonable grounds for suspecting that the information —

- (a) may be relevant to the investigation of a confiscation offence;
- (b) may assist a court in deciding whether or not to make an unexplained wealth declaration, a criminal benefits declaration or a crime-used property substitution declaration; or
- (c) may otherwise facilitate the operation of this Act or the regulations.

54. Financial institutions may be required to give information

- (1) For the purposes of any proceedings under this Act, or for the purposes of deciding whether to apply for a freezing notice, or for any order, declaration or warrant under this Act, the DPP or a police officer may require a financial institution to do any or all of the following —
 - (a) give information about whether a person described in the requirement holds an account with the institution;
 - (b) give information about whether or not an account described in the requirement is held with the institution;
 - (c) identify an account held with the institution;
 - (d) identify the holder of an account held with the institution;
 - (e) give information about the existence of any other kind of transaction between the institution and a person described in the requirement;
 - (f) if a transaction referred to in paragraph (e) has taken place, is taking place or is to take place — give prescribed particulars of the transaction.

...

- (4) The financial institution must comply with the requirement.
Penalty: \$500 000.

57. Applying for orders for examination

- (1) The DPP may apply to the District Court for an order for the examination of a person.
- (2) An application may be made ex parte.

58. Making orders for examination

- (1) The court may order a person to submit to an examination about any or all of the following —
 - (a) the nature, location and source of frozen property;
 - (b) the nature, location and source of property that is not frozen, but is suspected on reasonable grounds of being confiscable;
 - ...
 - (e) the wealth, liabilities, income and expenditure of a person who has, or is suspected on reasonable grounds of having, unexplained wealth;
- ...
- (2) The examination order may do any or all of the following —
 - ...
 - (b) require the person to give to the court any documents (including property-tracking documents) or information in the person's possession or control about the person's wealth, liabilities, expenditure or income;
 - (c) require the person to give to the court any documents (including property-tracking documents) or information in the person's possession or control about another person's wealth, liabilities, expenditure or income;
 - ...
 - (e) require the person to give any required information by affidavit, or require the person to attend the court for examination, or both;
 - ...

DEFINITIONAL PROVISIONS

102. Proceedings, general provisions about

- (1) Proceedings on an application under this Act are taken to be civil proceedings for all purposes.
- (2) Except in relation to an offence under this Act —
 - (a) a rule of construction that is applicable only in relation to the criminal law does not apply in the interpretation of this Act;
 - (b) the rules of evidence applicable in civil proceedings apply in proceedings under this Act;
 - (c) the rules of evidence applicable only in criminal proceedings do not apply in proceedings under this Act; and
 - (d) a question of fact to be decided by a court in proceedings on an application under this Act is to be decided on the balance of probabilities.

142. Term used: confiscable

Property is confiscable for the purposes of this Act if the property is —

- (a) owned or effectively controlled, or has at any time been given away, by a person who has unexplained wealth;

...

143. Term used: wealth

- (1) The following property, services, advantages and benefits together constitute a person's wealth —
 - (a) all property that the person owns, whether the property was acquired before or after the commencement of this Act;
 - (b) all property that the person effectively controls, whether the person acquired effective control of the property before or after the commencement of this Act;
 - (c) all property that the person has given away at any time, whether before or after the commencement of this Act;
 - (d) all other property acquired by the person at any time, whether before or after the commencement of this Act, including consumer goods and consumer durables that have been consumed or discarded;
 - (e) all services, advantages and benefits that the person has acquired at any time, whether before or after the commencement of this Act; and
 - (f) all property, services, advantages and benefits acquired, at the request or direction of the person, by another person at any time, whether before or after the commencement of this Act, including consumer goods and consumer durables that have been consumed or discarded.
- (2) Without limiting subsection (1), a reference in that subsection to property, services, advantages or benefits acquired by a person or by another person at the request or direction of the first-mentioned person is to be read as including a reference to any thing of monetary value acquired, in Australia or elsewhere, from the commercial exploitation of any product, or of any broadcast, telecast or other publication, where the commercial value of the product, broadcast, telecast or other publication depends on or is derived from the first-mentioned person's involvement in the commission of a confiscation offence, whether or not the thing was lawfully acquired and whether or not the first-mentioned person has been charged with or convicted of the offence.

144. Term used: unexplained wealth

- (1) For the purposes of this Act, a person has unexplained wealth if the value of the person's wealth under subsection (2) is greater than the value of the person's lawfully acquired wealth under subsection (3).
- (2) The value of the person's wealth is the amount equal to the sum of the values of all the items of property, and all the services, advantages and benefits, that together constitute the person's wealth.
- (3) The value of the person's lawfully acquired wealth is the amount equal to the sum of the values of each item of property, and each service, advantage and benefit, that both is a constituent of the person's wealth and was lawfully acquired.

149. Term used: lawfully acquired

Any property, service, advantage or benefit is lawfully acquired only if —

- (a) the property, service, advantage or benefit was lawfully acquired; and
- (b) any consideration given for the property, service, advantage or benefit was lawfully acquired.

156. Term used: effective control (in relation to property)

- (1) For the purposes of this Act, a person has effective control of property if the person does not have the legal estate in the property, but the property is directly or indirectly subject to the control of the person, or is held for the ultimate benefit of the person.
- (2) Without limiting subsection (1), when determining whether a person has effective control of any property, the following matters may be taken into account —
 - (a) any shareholdings in, debentures over or directorships of any corporation that has a direct or indirect interest in the property;
 - (b) any trust that has a relationship to the property;
 - (c) family, domestic and business relationships between persons having an interest in the property;
 - (d) family, domestic and business relationships between persons having an interest in or in a corporation that has a direct or indirect interest in the property;
 - (e) family, domestic and business relationships between persons having an interest in a trust that has a relationship to the property;
 - (f) any other relevant matters.

Glossary

property means —

- (a) real or personal property of any description, wherever situated, whether tangible or intangible; or
- (b) a legal or equitable interest in any property referred to in paragraph (a);

unexplained wealth has the meaning given in section 144;

unexplained wealth declaration means a declaration under section 12;

value, in relation to —

- (a) a person's unexplained wealth — means the amount calculated in accordance with section 13;
- (b) a person's wealth — has the meaning given in section 144(2);
- (c) a person's lawfully acquired wealth — has the meaning given in section 144(3);

CRIMINAL PROPERTY CONFISCATION ACT 2000 (WA)

BASIC STATISTICS AS AT 30 June 2011

Unexplained wealth as proportion of total amount confiscated:

Total confiscated 1/1/2001 to 30/6/2011	\$54,669,341
Total confiscated as unexplained wealth	\$6,027,794
Percentage unexplained wealth related	11%

Number of applications for unexplained wealth declarations

27 applications in 15 matters

21 applications have led to confiscation

3 applications did not lead to confiscation (2 of these related to partners of persons where there was confiscation)

3 applications pending

Number of drug trafficker (DT) applications

Total freezing notices on DT grounds 1274 (in 815 matters)

Total applications for confiscation on DT grounds 527

ATTACHMENT 3

No:	Case	Comment
1	MANSFIELD v DPP for WA [2006] HCA 38	Deals with release of frozen funds for legal costs and undertakings as to damages neither of which is relevant to UEW but it is the only High Court decision at present and does show the court's approach to the CPCA.
2	DPP for WA v BRIDGE & ORS [2005] WASC 36	Deals with constituents of a person's wealth and other matters.
3	DPP for WA v GYPSY JOKERS MOTORCYCLE CLUB INC [2005] WASC 61	A crime-derived case but has a useful comment about the onus of proof.
4	MANSFIELD v DPP for WA & ANOR [2007] WASCA 39	Criminal benefits case but relevant to UEW cases.
5	DPP for WA [2002] WASC 91	Ex parte application for examination orders based on unexplained wealth grounds.
6	DPP for WA v HAFNER [2004] WASC 32	Deals with constitutional issues but not in context specifically of UEW.

Case No.	Comments about Case	Property type	Comments about value
1	This matter was initially commenced under the Act in place before the CPCA, however it was decided to initiate action under the CPCA due to the new UW provisions. The offender was eligible to be declared a DT but as the offence was committed before the CPCA came into force the DT provisions could not be used.	Land, bank Accounts, shares, other	A negotiated settlement was reached which resulted in approximately \$2.62m being paid into the account.
2	This matter was initially commenced under the Act in place before the CPCA, however it was decided to initiate action under the CPCA due to the new UW provisions. The offender was eligible to be declared a DT but as the offence was committed before the CPCA came into force the DT provisions could not be used.	Land, bank Accounts, shares, vehicles	A negotiated settlement was reached which resulted in approximately \$1.54m being paid into the account.
3	This matter was initially commenced under the Act in place before the CPCA, however it was decided to initiate action under the CPCA due to the new UW provisions. I'm not sure if the offender was eligible to be declared a DT but the person did come to Police attention because of drug charges.	Bank accounts, vehicle, jewellery, cash	A negotiated settlement was reached which resulted in approximately \$52k in cash being paid into the account.
4	This matter initially commenced as a DT matter however although convicted of certain charges the offender was not declared a DT.	Land, Bank accounts, vehicle	A negotiated settlement was reached which resulted in \$200k being paid into the account.
5	This person was a "Bikie". He came to the attention of police involved in another investigation. He was later charged with a DT offence but died before the charges were dealt with.	Land, bank accounts, cash, vehicles	A negotiated settlement was reached which resulted in approximately \$250k being paid into the account.

6	This offender came to Police attention for drug charges before the CPCA came into force. At that time \$60k in cash was seized. Action was later commenced under the CPCA	Land, bank accounts, vehicles, cash	A negotiated settlement was reached which resulted in \$40k being paid into the account.
7	This offender came to Police attention for drug charges before the CPCA came into force. Action was later commenced under the CPCA	Bank account, vehicles, shares	A negotiated settlement was reached which resulted in approximately \$126k being paid into the account.
8	This action commenced with the husband being eligible to be declared a DT but was finalized as UW for both the husband and wife	Land, bank accounts, vehicles, shares, household items, etc	A negotiated settlement was reached which resulted in approximately \$330k being paid into the account.
9	This action was commenced after a person was found with a large sum of cash. It was part of a drug surveillance operation, but no charges were laid.	Cash	After a hearing the Court declared that \$200k was UW which was paid into the account
10	This action was commenced after a person was found with a large sum of cash. It was part of a drug surveillance operation, but no charges were laid.	Cash	After hearing the Court decided that the cash was explained.
11	This matter initially commenced as a DT matter however although convicted of certain charges the offender was not declared a DT.	No actual FO was issued as the property was held under a CD FN	A negotiated settlement was reached which resulted in \$35k being paid into the account.
12	This matter was commenced as a result of two members of the family being charged with a DT offence. One offender was declared while the charges against the other offender were dismissed/discontinued.	Land, bank accounts, vehicle	ongoing
13	This matter was commenced as a result of the person given evidence at a Crime and Corruption hearing	Land, bank accounts	A negotiated settlement was reached which resulted in \$100k being paid into the account.

14	This matter was commenced as a result of a person stealing as a servant	Land, bank account	A negotiated settlement was reached which resulted in \$150k being paid into the account.
15	This matter initially commenced as DT matter however although convicted of certain charges the offender was not declared a DT.	Land, bank accounts, vehicle	Ongoing
16	This action was commenced after a person was found with a large sum of cash. Part of a drug surveillance operation.	No actual FO was issued as the property was held under the <i>Misuse of Drugs Act 1981</i> .	A negotiated settlement was reached which resulted in approximately \$63k being paid into the account.
17*	This action was commenced as a result of links to an earlier UW matter.	No actual UW application was issued however Land, bank accounts, other were frozen on the basis of examination	A negotiated settlement was reached which resulted in \$315k being paid into the account.

* This matter did not show in the registers due to no FO or application on UW grounds.